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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 581

JAPANESE WAR NOTES CLAIMANTS ASSOCIATION OF THE PHILIPPINES, INC., (JAPWANCAP, INC.), *Petitioner,*

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

REPLY TO MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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November 1967

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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In its Memorandum in Opposition (hereinafter referred to as "Memo"), respondent finally acknowledges that during World War II, the United States circulated in the Philippines counterfeit Japanese occupation currency. For the first time the respondent brings to light an Executive Agreement dated September 11, 1946 made between the U.S. and Philippine Governments without notice or consent of those affected, and argues that this agreement released the United States from any further liability for the counterfeit currency.

Petitioner respectfully points out that respondent not only relies on a document not heretofore in evidence, but also takes material in such document out of context to support its contention that the Philippine Government in 1946 agreed to hold the United States harmless from any liability for the counterfeit currency.

In April 1966 when this case was before the United States Court of Claims, plaintiff moved for a Call on the State Department to produce all documents in its possession relative to the counterfeit currency. Respondent successfully resisted this motion. Now, however, when the case is before this Court on a Petition for a Writ of Certiorari, the respondent relies on an Executive Agreement signed by a representative of the State Department which respondent refused to produce in the United States Court of Claims, and the existence of which plaintiff was unaware until now.

The pertinent parts of the Executive Agreement of September 11, 1946 read as follows:

* * * * *

"WHEREAS, the United States has a financial obligation to the Philippines arising from advances and loans to the United States and the issuance of emergency currency and guerilla currency during the war with Japan;

"NOW THEREFORE, in consideration of the promises and the mutual agreements and covenants hereinafter stated, it is agreed;

* * * * *

ARTICLE 5. CONSIDERATION

* * * * *

b) That the United States shall forthwith pay to the Philippines the sum of Twenty-five Million Dollars ($25,000,000) *on account and in part*

payment of the financial obligations and responsibilities of the United States arising from:

1) The issuance in the Philippines of emergency currency, guerilla currency, military scrip or other writing intended to circulate as money, the issuance of which was duly authorized, and

2) Any unpaid advances, loans, credits, and overdrafts by the Philippine National Bank, the Commonwealth of the Philippines or any other corporation, political subdivision or agent thereof, during the war with Japan but not after the second day of September 1945; and that the Philippines, as partial consideration for the property transferred hereunder and not identified in ARTICLE 5, a. hereof as granted under the Philippine Rehabilitation Act of 1946, hereby releases and acquits the United States of the unpaid balance of the financial obligations and responsibilities aforesaid and shall forever indemnify and hold the United States harmless from all claims and demands of every nature arising therefrom by any person or persons whomsoever." (Emphasis added)

Notwithstanding respondent's assertion that

> "There could be no allegation, of course, that the counterfeit currency, utilized in time of war in enemy-controlled territory, purported to be an obligation of the United States" (Memo, page 4),

it is clear that in the Executive Agreement the United States acknowledged its obligation and responsibility for the counterfeit currency. It is also clear that the $25,000,000 paid by the United States was only "on account and in part payment" and not in full and final settlement of the obligations and responsibilities enu-

merated in Article 5(b)(1) above, and that the payment went to the Philippine Government and not to the innocent Filipino holders of the counterfeit currency.

The Japanese occupation notes were a legal medium of exchange and the acts of the United States in secretly counterfeiting such notes offended the law of nations and violated international law.

The "hold harmless" clause in Article 5(b)(2) on which respondent now relies, relates not to the obligations and responsibilities for the currencies enumerated in Article 5(b)(1), but solely to the obligations of the United States for the unpaid advances, loans and credits referred to in Article 5(b)(2).

The respondent notes the absence of any allegations that the counterfeit currency was discovered by the Japanese to be false or that it was not accepted at the same rate as the genuine occupation currency (Memo, page 4). Respondent implies that the United States is no more obligated to redeem the counterfeit currency than the Japanese Government is obligated to redeem its genuine occupation currency. But it should be noted that plaintiff alleges in its Petition for Certiorari that Article 14(b) of the 1952 Japanese Peace Treaty, which waived plaintiff's rights to claim against Japan, was forced upon the Philippines under duress by the United States.

Respondent refers to plaintiff's 1952 letter to Mrs. Roosevelt but neglects to refer to plaintiff's letter to President Dwight D. Eisenhower on February 5, 1953 which was cited in plaintiff's supplemental Memorandum of Points and Authorities in support of plaintiff's Motion for a Re-hearing in the United States Court of Claims. Under the doctrine of *Honda* v. *Clark*

(1967) 386 U.S. 484, *Crown Coat Front* v. *U. S.* (1967) 386 U.S. 503, and *Barchet* v. *N.Y.C. Tr. Auth.* 20 N.Y. 2nd, 1; 281 N.Y.S., 2nd, 289 (May 1967), the filing of plaintiff's claim with the President of the United States on February 5, 1953 as well as the filing of the claim in 1952 with Mrs. Roosevelt as United States representative to the United Nations, should be liberally construed to constitute a timely filing, tolling the running of the Statute of Limitations. The plaintiff, representing thousands of poor Filipinos who held such counterfeit currency when the Japanese surrendered, was unfamiliar with Court procedures and practices in the United States and any doubts should be resolved in their favor. Contrary to respondent's assertions in its Memo, plaintiff has never abandoned its contention that filing the claim with the President of the United States in 1953, as well as with Mrs. Roosevelt as United States representative to the United Nations in 1952, constituted a timely filing of the claim. The United States bears a grave responsibility for fair and equitable dealing with its former nationals and citizens in the Philippines and the claims which plaintiff asserted in the U. S. Court of Claims have never been abandoned by plaintiff.

The mere fact that there were references in the Britannica Year Book in 1946 and in the Commercial and Financial Chronicle in 1947 to the issuance of guerilla currency by the United States does not destroy plaintiff's argument that there was a fraudulent concealment by respondent of its part in manufacturing and circulating the counterfeit occupation currency. The United States has been very careful never to admit that it counterfeited Japanese occupation currency, at least until now when it disclosed the Executive Agree-

ment of September 11, 1946. Even in the Executive Agreement the United States has been careful to refer only to

> "emergency currency, guerilla currency and military scrip or other writing intended to circulate as money, the issuance of which was duly authorized. . . ."

and not to refer to counterfeit currency. All attempts by plaintiff to obtain any information concerning the counterfeit currency have been resisted by respondent with the argument that restrictions inherent in the continued classification of "Top Secret" forbade respondent from revealing anything at all concerning the counterfeit currency. The information was kept secret not only from the plaintiff, but also from the Court. Thus, respondent has, by its own acts, tolled the Statute of Limitations. If the Executive Agreement of September 11, 1946 had been in evidence before the United States Court of Claims, the decision of the Court might have been different.

The cases cited by respondent are inapposite, irrelevant and inapplicable to the instant case.

For the foregoing reasons, the petition for a Writ of Certiorari should be granted and the case remanded to a Commissioner of the United States Court of Claims for trial.

Respectfully submitted,

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